

MINIMUM RULES FOR THE PROTECTION OF NON-DELINQUENT DETAINEES

by J. Graven

This subject, which was on the agenda of the last meeting of the Medico-Legal Commission of Monaco, was dealt with by Professor Jean Graven in a report of which extracts were given in the International Review of August 1967 and to which were attached draft "minimum rules" by the same author. The Commission adopted the Rules quoted below.¹ After examining this text the ICRC suggested some additions which are given in italics.—(Ed.)

Considering that, in application of universally recognized principles of human rights for all sorts and conditions of men, a body of minimum rules for the treatment of detained delinquents has been drawn up on the basis of resolutions and recommendations adopted by the Congress of the United Nations, which met for that purpose in Geneva from August 22 to September 3, 1955;

Considering also that social conscience would not be satisfied if, whilst penitentiary science is increasingly adapting the treatment of delinquents deprived of their liberty to the requirements of justice and humanity, minimum guarantees were not granted to persons deprived of their liberty without having been prosecuted for penal offences and accused or convicted of an infringement of national or international law;

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Considering, further, the absence of such guarantees for administrative, political and military internees and persons arrested for security reasons in the event of danger or internal and external strife;

There should be drawn up for the protection of these people a general statute prescribing minimum standards derived from the principle contained in article 94 of the Standard Minimum Rules for persons detained after legal conviction, even for civil offences, the letter and the spirit of which are to be found in the fundamental rules of the Universal Declaration of Human Rights of December 10, 1948, which stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 5).

I. General principles

1. Nothing in these Rules shall justify or encourage measures of detention dictated by exceptional circumstances. Their sole object is to attenuate the hardships of detention.

2. The minimum Rules set forth in the following articles shall, in accordance with the requirements of article 2 of the Universal Declaration of Human Rights, be applied impartially and without distinction of any kind based on race, colour, national or social origin, sex, language, religious, political or other opinion, property or other considerations of a similar personal order.

3. Specific rules suitable for particular categories of non-delinquent detainees, taking their condition and need for special treatment or work into account, are not precluded, provided they are consistent with these general Rules, notably in so far as they extend the guarantees or benefits herein provided.

II. Registration — Identification and control of detainees

4. In any place, institution or camp in which persons are detained, there shall be maintained complete and up-to-date lists or registers with numbered pages showing:

a) The identity of each detainee, his citizenship or nationality and the conditions of his detention;

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b) the date of his arrival, details of any transfers from place to place, the date of release or departure.

5. Personal effects which cannot be left in his possession shall be recorded and maintained in proper condition to be returned to him upon his release.

III. Separation of detainees

6. Men and women detainees shall be accommodated in separate institutions or parts of institutions. In the event of collective detention, family or communal accommodation shall be provided wherever possible.

7. In the event of collective civilian detention, children shall remain with the family or family circle whenever detention conditions and organization make this possible. Notwithstanding, exceptions justified by educational or professional training requirements shall be permitted.

Children less than six years of age shall in no case be separated from their mothers.

8. Civilian or military detainees or internees belonging to countries which are hostile to one another shall be separated. They may be accommodated together in other cases, taking into account national, linguistic or other affinities.

9. Non-delinquent detainees shall in all cases and without exception be distinguishable and separated from penal law detainees and convicted prisoners.

IV. Premises, fixtures and fittings

10. All institutions or places of detention shall satisfy the necessary requirements of safety, health and hygiene, taking the number of detainees and climatic and seasonal conditions into account. They shall be sufficiently large to avoid overcrowding and demoralizing promiscuity. They shall be properly maintained and cleaned.

11. There shall be adequate space, ventilation, lighting and heating for each detainee, in a manner consistent with scientifically

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acknowledged standards of hygiene to provide normally healthy living conditions and to avoid any risk of impairing the health of persons detained. (*As a general rule, 8 cubic metres of space for each detainee is an acceptable standard.*)

12. Premises shall be appropriate to the demands of any work performed, particularly as regards space, lighting, ventilation and any other essential condition to enable work to be carried out normally and to maintain the health of the workers.

13. When detainees need not be kept in individual cells, but are in rooms and dormitories (*when detainees are not in individual cells but in rooms and dormitories*) they shall be grouped by selection according to their suitability for such accommodation, in accordance with disciplinary and moral requirements. Night supervision should be appropriate.

14. Each detainee shall, in keeping with local or national standards, have an individual bunk or bedding; the latter shall be properly maintained and changed often enough to ensure its cleanliness. Detainees shall be responsible for keeping rooms, premises and beds neat and tidy in accordance with standing regulations.

15. Amenities for baths, showers and cleanliness shall be adequate and maintained in proper operating condition at temperatures suited to the climate so that each detainee shall be enabled and required to use them as frequently as hygiene demands. Sanitary facilities shall be such as to enable detainees to comply with the needs of nature at any time in a manner proper and decent.

V. Hygiene, personal cleanliness, clothing, exercise

16. The authorities shall demand personal cleanliness of the detainees and provide them with the facilities therefor (water, toilet requisites, necessities for care of the hair and the beard), to enable detainees to maintain a decent appearance, dignity and self-respect. The authorities' demands shall not be of a vexatious nature under the pretext of hygiene (e.g. head shaving or forbidding beards).

17. If detainees are not permitted to wear and change their own clothing that which is issued shall be appropriate to the climate and shall afford adequate protection. It shall not be degrading or humiliating nor give rise to confusion with the garb issued to convicted penal law offenders.

All clothing shall be clean and well maintained. When detainees are permitted to wear their own clothing arrangements shall be made to ensure that it is clean, decent and fit for use at the beginning of the detention period. Provision shall be made for the cleaning and changing of underclothing as frequently as is consistent with the demands of hygiene.

18. Every detainee shall be entitled to daily physical exercise (*in the open air*) for at least one hour; this may take the form of sport, gardening or supervised walks within the detention institution and to the extent permitted by climatic conditions.* Grounds, equipment and other necessities appropriate to the number of detainees shall be provided as far as possible. (*Detainees in single cells shall be permitted to leave them during the day to associate with other detainees. They shall be confined to their cells only during the night.*)

VI. Work and diet

19. Work which detainees are compelled to perform shall not be harmful or degrading. It shall as far as possible be appropriate to their physical and intellectual ability. It shall not last for an excessive length of time and there shall be the necessary breaks to avoid impairing the health of those obliged to perform it.

Means of compulsion to enforce the performance of work or the standard output are subject to general rules in this respect (art. 30 and 31).

20. (1) Every detainee shall at normal hours be decently served a wholesome meal of nutritious value sufficient to maintain health and strength. Drinking water shall be available as detainees require.

The daily diet shall be issued free and its calorific value and vitamin content shall be consistent with acknowledged standards appropriate to age and work performed.

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(2) Permission for non-delinquent detainees to obtain extra food at their own expense or at the expense of their family, friends or of a relief society, shall be provided for in the internal regulations on condition that such facilities are not abused.

If circumstances permit, detainees may themselves prepare the food with which they are provided.

VII. Medical care

21. (1) Every place of detention shall have the services of at least one doctor. The medical service shall be organized in close co-operation with the public health administration.

Provision shall be made for the services of a psychiatrist for diagnosis and treatment of mental disorders.

Any place of detention where treatment is given shall, as far as possible, have experienced personnel, equipment, means for treatment and the pharmaceutical products required for nursing and for suitable and appropriate medical and dental treatment.

(2) When places of detention do not have the necessary doctors, personnel, equipment and means, provision shall be made for transfer of detainees to suitable civilian or military hospitals, subject to the essential security measures.

22. In every institution where women are detained there shall be suitable provision for pre- and post-natal treatment of maternity cases, and for child-birth. In the absence of such facilities provision shall as far as possible be made for transfer to hospital subject to the necessary security measures.

Nurseries shall be provided, with experienced personnel, where nursing infants may be cared for whenever they cannot be left with their mothers.

23. The doctor shall watch over detainees' health in accordance with the generally acknowledged principles of medical ethics. He shall carry out the necessary regular inspections and examinations.

In particular he shall:

a) examine detainees on arrival and whenever necessary thereafter, in order to isolate detainees who have or are suspected of

having infectious or contagious diseases and those liable to be dangerous to their fellow detainees; to prescribe, order or take precautionary measures and give necessary treatment; to decide every detainee's capacity for work;

b) visit regularly and as the need arises, special cases, sick detainees, those who display or complain of symptoms of illness and those to whom his or the staff's attention has been drawn;

c) advise the director of the institution on matters of hygiene and cleanliness of premises, dormitories, work rooms and quarters, on the need for and operation of occupational equipment and sanitary installations (lighting, ventilation, heating, etc.), on diet, suitable clothing, regulations for physical exercise, rest periods, and any other requirements for the health of the detainees.

24. The doctor shall report to the director regularly and whenever any circumstance involving a detainee or detainees makes this necessary.

The director shall take into consideration the advice and reports of the doctor responsible for hygiene and the detainees' health. If the director agrees with the doctor he shall immediately take any necessary measures. If he disagrees he shall submit the matter without delay to higher authority.

VIII. Discipline and outside contacts

25. (1) Order and discipline shall be firmly maintained but shall not involve restrictions unnecessary to good order, security and organization of community life.

(2) No detainee shall be empowered to exercise disciplinary measures. According to circumstances, systems of good order and discipline, the operation of which is to some extent confided in the detainees themselves, with responsibility for organizing certain social, educational, sporting or recreational activities subject to supervision, may be justified.

(3) Detention conditions, the rights and obligations of detainees, working hours, leisure time, and the nature and duration of disciplinary punishment, shall be determined by legislation or administrative regulations.

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26. (1) To an extent compatible with the maintenance of good order, administrative needs and security requirements, detainees shall be permitted to correspond with their families and relatives as well as with the legal representatives, agents or advisers whose services they require for the defence of their interests.¹

(Detainees shall be permitted to correspond with their families and relatives as well as with the legal representatives, agents and advisers whose services they require for the defence of their interests. They shall be permitted to receive visits from these persons. There shall be a strict time limit to any restrictions in this connection.)

Death, illness, serious accidents, transfer to an institution for mental cases or to another place of detention shall be communicated to the detainee's family or relatives either by the administration or by the detainee himself when he is able to do so or by a relative or friend at his dictation. Likewise detainees shall be kept informed of events concerning their families.

(2) Unless serious and exceptional circumstances demand otherwise, foreign detainees shall be granted reasonable facilities to communicate with their country's diplomatic or consular representatives or with those of the State entrusted with their interests, and with any authorities or national or international humanitarian institutions whose task it is to assist or protect detainees.

27. Detainees shall be kept regularly informed of major current events either through newspapers, periodicals, other publications, radio broadcasts, lectures or any similar media authorized or controlled by the administration.

IX. Culture, recreation and moral comfort

28. Subject to the same conditions of authority and control, reasonable recreational and educational amenities appropriate to the circumstances and place of detention shall be provided in the

¹ The ICRC suggests the first paragraph be deleted and replaced by the text in italics which follows.

form of lectures, slide or film projections, musical, theatrical, sport and other programmes, reading material and various games.

29. Detainees shall as far as possible be provided with spiritual or religious comfort. If there is a sufficient number of detainees of the same religion a minister thereof should be authorized to organize religious services and visit the detainees at specific times.

A detainee shall never be refused the right to contact a qualified representative of any religion. If a detainee refuses to receive a minister of religion or to take part in religious service his attitude shall be respected; no compulsion shall be used or punishment inflicted for that reason.

X. Instruments of restraint and punishment

30. (1) No means of restraint such as handcuffs, chains, irons or strait-jackets shall be used except in the following cases:

a) As a precaution against escape, during transfer or in conditions and circumstances involving a risk thereof; such implements shall be removed when the detainee appears before a judicial or administrative authority and when the risk of which there was reasonable apprehension no longer obtains;

b) On orders of the director, if need be after urgent consultation with the doctor, when normal means of controlling a detainee have failed or proved inadequate to prevent him from injuring himself and others and from damaging property;

(2) The nature and use of restrictive measures shall be prescribed by the general administration, to which the director of the institution shall report immediately on serious or urgent cases. They shall not be applied for longer than is strictly necessary.

31. (1) No detainee shall be punished otherwise than in conformity with legal provisions and regulations, and never twice for the same offence.

Punishment shall not be inflicted, except in very minor cases, without the detainee's being informed of the accusation against him and his being given the possibility of presenting his defence, if necessary through an interpreter, and without a full and impartial enquiry by the director.

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(2) Corporal punishment, confinement to cells which are dark or too small to permit normal posture, blows, and all cruel or degrading treatment shall be prohibited.

Solitary confinement, reduction of diet or any other punishment likely to impair physical or mental health shall be inflicted only to an extent which is reasonable or certified in writing by a doctor to be bearable and without great danger.

The doctor shall visit detainees undergoing such disciplinary punishment and report to the director immediately if he considers the punishment should be changed or ceased for physical or mental health reasons.

XI. Transfers

32. In the event of transfer from one place of detention to another, detainees shall be protected as much as possible from the public gaze, unwelcome or hostile curiosity, humiliation, insult or violence.

33. The cost of transferring detainees shall be borne by the administration and transfers shall be carried out in the same conditions for all, subject to special consideration for age, sex or sickness and even rank where appropriate.

Transfer of detainees, prisoners or internees under conditions which are inhuman or dangerous for their health due to overcrowding, lack of air, light, or food or for any other circumstances affecting their physical well-being, shall be prohibited.

XII. Information and complaints

34. On arrival, each detainee shall be given, through posters or otherwise, precise, written, and clearly understandable information on conditions and rules applicable to detainees of his category, regulations for discipline, authorized methods of obtaining information and lodging requests or complaints, and any other details necessary for him to know his rights and obligations and to adapt to life in the penitentiary institution.

If a detainee is illiterate such information should be given to him orally.

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35. Every detainee shall have the opportunity of making requests or complaints to the director of the place of detention or to an official authorized to represent him, either through the ordinary channels adopted in the institution or by addressing himself to the inspector or panel of inspectors in the course of their inspection.

He shall be permitted to talk with the inspector or any officer appointed to carry out inspection, without the presence of the director, other members of the detention institution's staff or any other person.

(2) Unless a request or complaint is obviously groundless it shall be investigated quickly and impartially by the director and a reply shall be given as soon as possible. If rejected, the grounds therefor must be stated.

Detainees shall not be punished for making complaints even if they are rejected.

XIII. Staff professional qualifications and character

36. (1) The administration responsible for places of detention and for their proper organization and conduct shall exercise care in the recruitment of its officials and staff of all ranks in places of detention of all types (including detention camps and internment camps), by enquiring into their character, qualifications and sense of duty and responsibility.

(2) Any official or staff member committing a breach of legal and professional obligations or duties shall be punished by disciplinary or penal measures.

XIV. Inspections and supervision

37. Qualified and experienced inspectors appointed by the authorities shall regularly and frequently inspect places of detention and the conditions therein.

Inspectors shall, in particular, check that:

a) places of detention are run in conformity with the law, regulations, agreements or prevailing provisions, including the

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present Minimum Rules, with a view to ensuring observance of the conditions and aims thereof;

b) detainees and internees are treated in accordance with principles of humanity, justice and dignity consistent with the present Rules and those postulated by the Universal Declaration of Human Rights.

38. Inspection and control shall be authorized, particularly by qualified representatives of the International Committee of the Red Cross or other international or regional institutions of which the objectives are humanitarian and the action and impartiality acknowledged and known to be reliable.

The necessary arrangements for such inspections shall be made with the relevant administration and directors of institutions, camps and other places of detention or internment.

Visits and inspections shall be permitted without let or hindrance by conditions or obstacles which would vitiate them and impede the achievement of their humanitarian purpose. (*Persons carrying out such inspections shall be given facilities to talk in private with detainees of their own choosing.*)

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